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No. 98-3

EASTERN PACIFIC OCEAN TUNA FISHING AGREEMENT

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE EASTERN PACIFIC OCEAN TUNA FISHING AGREEMENT, SIGNED BY THE UNITED STATES ON MARCH 15, 1983

MAY 12, 1983.—Agreement was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *May 11, 1983.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, the Eastern Pacific Ocean Tuna Fishing Agreement which has been signed by the United States, Costa Rica and Panama. It will enter into force following ratification by five coastal states of the region. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Treaty.

The United States has been involved in a fisheries dispute with several Latin American countries as a result of conflicting laws regarding jurisdiction over highly migratory tuna and has, in the past, prohibited imports of tuna from several countries as a result of seizures of U.S. tuna boats. These countries claim jurisdiction over all fish, including tuna, within 200 nautical miles. The United States does not recognize, or claim, jurisdiction over tuna beyond 12 nautical miles. United States policy, pursuant to the Magnuson Fishery Conservation and Management Act, has been to negotiate international agreements to ensure the effective conservation and management of tuna and to secure access for U.S. fishermen to the stocks wherever they migrate beyond a narrow belt of coastal waters.

This Agreement, which is interim in nature pending the negotiation of a comprehensive tuna conservation and management regime, provides for the issuance of international licenses for fishing tuna in a broad area of the eastern Pacific Ocean. Provision is also made for conservation under specified circumstances. It thus furthers U.S. fisheries policy goals while reducing tensions that have arisen as a result of conflicting juridicial claims.

I recommend that the Senate give early consideration to the Treaty and give its advice and consent to ratification.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, April 8, 1983.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with the view to its transmission to the Senate for advice and consent to ratification the Eastern Pacific Ocean Tuna Fishing Agreement. This Agreement was signed on March 15, 1983 by the United States, Costa Rica and Panama. The Agreement, which will go into effect when signed and ratified by five coastal states, is a regional convention which makes available international tuna licenses. License fees will pay for administration of the Agreement, and thus, there will be no direct cost to the U.S. government. Provision also is made for conservation when circumstances permit.

The negotiation of the new Agreement is an important development in our fisheries policy. Most nations along the coast of the eastern Pacific Ocean claim 200 nautical mile jurisdictions for tuna. The United States, however, does not claim or recognize coastal state jurisdiction over highly migratory tuna beyond 12 nautical miles of the coast, but believes that tuna resources are best managed internationally. The regional Agreement is a significant step forward in support of such international management. Equally important, for those nations party to it, the new Agreement should end the cycle of seizures of U.S.-flag tunaboats and the subsequent imposition of retaliatory U.S. embargoes mandated by the Magnuson Fishery Management and Conservation Act. The U.S. tuna industry strongly supports the Agreement.

The area covered by the Agreement coincides with the yellowfin conservation area (CYRA) of the Inter-American Tropical Tuna Commission (IATTC), except those areas within 200 nautical miles of states not parties to the Agreement and those areas within 12 nautical miles of the Contracting Parties. The CYRA consists of an ocean area of over 2 million square miles extending from California to Chile and over 1,000 miles off the coast. In order to fish in this area, the Contracting Parties have agreed to require their tuna vessels to have an international license. The fee for the international license is set, for the first five coastal countries joining the Agreement, at $60 per net registered ton of the vessel to be licensed, but may be increased in increments up to a maximum of $100 per ton as more states become party to the Agreement. The fees collected are to be distributed among the Contracting Parties in proportion to the amount of tuna taken within 200 nautical miles of their coasts each year. Any coastal state of the eastern Pacific Ocean or any IATTC member may become party

to the Agreement and a voting member of the Council. Other States may join on unanimous consent of the Council members.

The Agreement does not have a specific termination date, although any party may withdraw from it after two years and the provisions are inoperative if there are fewer than 5 coastal state parties. However, the Agreement is intended to be interim, pending the conclusion of more comprehensive arrangements. The IATTC will continue to fulfill its responsibilities to study and manage the tuna and porpoise stocks of the eastern Pacific Ocean. The agreement will not duplicate the work of the IATTC.

United States tuna industry interests have been closely involved in the negotiation of this Agreement and, as noted, are in favor of its ratification. Interested members of Congress and appropriate Congressional committees have been briefed and are supportive of the Agreement. The Departments of State and Commerce also recommend ratification.

Analysis of treaty text

Article I establishes an interim regime for the licensing of tuna vessels in the eastern Pacific Ocean.

Article II(B) defines the area to be covered by the Agreement, which is the same as the conservation area (CYRA) of the Inter-American Tropical Tuna Commission (IATTC), with the exception of those areas within 200 nautical miles of states not parties to the Agreement and those areas within 12 nautical miles of the Contracting Parties.

Article III(A) establishes the Council, which will implement the Agreement. Each Contracting Party which is a coastal state or a member of the IATTC shall have one representative on the Council and one vote. Council decisions are by unanimous agreement with a minimum of five members present.

Article III(B) describes the responsibilities and operation of the Council, and the appointment of a Director.

Articles III (C) and (D) deal with conservation of tuna resources. The members of the Council may, based on appropriate scientific data, consult among themselves and with other states not Party to the Agreement but which fish tuna on a significant scale in the Eastern Pacific Ocean. Whenever the Contracting Parties include all such fishing states, the Council may make conservation recommendations. Such recommendations shall be consistent with the obligations of any Contracting Party pursuant to any relevant multilateral conservation agreement and shall be based on reports of the IATTC.

Article IV establishes a system of international licenses for fishing tuna in the Eastern Pacific Ocean, to be administered by the Council. The Director of the Council or an appointed national authority will issue licenses to the flag vessels of the Contracting Parties.

Article VI deals with enforcement of the Agreement. It requires the Contracting Parties to avoid prohibitions of tuna imports from other Contracting Parties taking enforcement actions consistent with the Agreement. Article VI also requires each Contracting Party to adopt, as necessary, provisions in its national law for enforcement of the Agreement.

Articles VII and VIII specify membership eligibility. Coastal states and members of the IATTC may be members, or any other state with the approval of the Council.

Article IX states that the Agreement will enter into force 30 days after the ratification or adherence of the fifth coastal state.

Article X appoints Costa Rica as depository government for the Agreement.

Article XI states that, after entering into force, the provisions of the Agreement will be suspended for such time as there are fewer than five Contracting Parties.

Article XII describes procedures for withdrawal from the Agreement.

Article XIII reserves the juridical positions of the Contracting Parties. The United States does not recognize or claim jurisdiction over highly migratory tuna beyond 12 nautical miles. Most Latin American nations claim 200 nautical miles.

Article XIV commits the Contracting Parties to continue their efforts to establish a new regional regime for the management and conservation of tuna in the eastern Pacific Ocean.

Article XV calls on the Contracting Parties to cooperate in their tuna fisheries relations until the Agreement enters into force.

Article XVI states that the Agreement is open for signature until the ratification or adherence by the fifth coastal state.

Paragraphs A–D of the Protocol deal with the procurement of international licenses under the Agreement. The fee for the vessels of all members will be $60 per net registered ton when the Agreement enters into force with five coastal states, will increase by an amount determined by the Council with the membership of the sixth coastal state, and will increase in increments of at least $10 to an overall maximum of $100 with the adherence or ratification of other coastal states. The fee shall be decreased in increments, to a minimum of $60 per net registered ton, with the withdrawal of coastal states. Licenses will not be required of vessels of less than 200 net registered tons which fish exclusively within 200 nautical miles of their own coast. Adjustments of the fees shall take into consideration, inter alia, the amount of tuna taken within 200 nautical miles of the coast of states joining or withdrawing from the Agreement.

Paragraph F of the Protocol directs the Council to disburse the collected fees, after a deduction of no more than ten percent to cover administrative costs, to the coastal states in proportion to the amount of tuna taken within 200 nautical miles of their coast during the year in which the licenses are issued.

Paragraph G of the Protocol concerns the collection of statistical data by the Director and its transmission to the Council. Licensed vessels shall report catches by size and location. Such reports will be confidential and the Director will transmit the data to the Council only in aggregate form for purpose of determining fee disbursements.

Respectfully submitted,

GEORGE P. SHULTZ.

EASTERN PACIFIC OCEAN TUNA FISHING AGREEMENT

The Contracting Parties to this Agreement:

Resolved to cooperate for the purpose of ensuring the conservation and rational utilization of tuna resources in the eastern Pacific Ocean;

Bearing in mind that tuna cover a broad area which, in the eastern Pacific Ocean, includes jurisdictional zones of a varying nature declared by the Coastal States and a considerable portion of the seas in which Coastal States do not exercise any jurisdiction;

Recognizing that a tuna conservation regime for the eastern Pacific Ocean cannot be effective and equitable unless it is comprehensive and has the participation of all States that fish tuna in that region on a meaningful scale in relation to conservation requirements;

Convinced that it is essential to establish, pending conclusion of a comprehensive regional tuna conservation regime, an interim regime taking into account the jurisdictional zones declared by many Coastal States of the eastern Pacific Ocean as well as the highly migratory character of tuna;

Have agreed as follows:

ARTICLE I

The Contracting Parties agree to establish an interim regime for the management of fishing activities of tuna vessels in the eastern Pacific Ocean, based on a scheme for granting licenses in the region, which guarantees rational exploitation of the resources and equitable access to the fishing areas.

ARTICLE II

For the purposes of this Agreement, the Contracting Parties agree that:

(A) "Coastal States" means States bordering the area described in paragraph (B) of this Article.

(B) The "Agreement Area" means the following:

From the point on the mainland where the parallel of 40 N latitude intersects the coast westward along the parallel of 40 N latitude to 40 N latitude by 125 W longitude, thence southerly along the meridian of 125 W longitude to 20 N latitude by 125 W longitude, thence easterly along the parallel of 20 N latitude to 20 N latitude by 120 W longitude, thence southerly along the meridian of 120 W longitude to 5 N latitude by 120 W longitude, thence easterly along the parallel of 5 N latitude to 5 N latitude by 110 W longitude, thence southerly along the meridian of 110 W longitude to 10 S latitude by 110 W longitude, thence easterly along the parallel of 10 S latitude to 10 S latitude by 90 W longitude, thence southerly along the meridian of 90 W longitude to 30 S latitude by 90 W longitude, thence easterly along the parallel of 30 S latitude to the point on the mainland where the parallel intersects the coast, excluding the areas within 12 nautical

miles of the baseline from which the breadth of territorial sea is measured and those areas within 200 nautical miles of the baselines of Coastal States not signatories to this Agreement, measured from the same baseline. The Agreement area may be adjusted according to the provisions of Article III(B).

(C) The species of tuna subject to this Agreement are: yellowfin tuna, *Thunnus albacares* (Bonnaterre, 1788); bigeye tuna, *Thunnus obesus* (Lowe, 1839); albacore tuna, *Thunnus alalunga* (Bonnaterre, 1788); northern bluefin tuna, *Thunnus thynnus* (Linnaeus, 1758); southern bluefin tuna, *Thunnus maccoyii* (Castelnau, 1872); skipjack tuna, *Katsuwonus pelamis* (Linnaeus, 1758); black skipjack, *Euthynnus lineatus* (Kishinouye, 1920); Kawakawa, *Euthynnus affinis* (Cantor, 1849); bullet tuna, *Auxis rochei* (Risso, 1810); frigate tuna, *Auxis thazard* (Lacepede, 1800); eastern Pacific bonito, *Sarda chiliensis* (Cuvier *in* Cuvier and Valenciennes, 1831); and, Indo-Pacific bonito, *Sarda orientalis* (Temminck and Schlegel, 1844).

ARTICLE III

(A) The Contracting Parties agree to establish a Council to implement this Agreement. The Council shall be composed of representatives of the Contracting Parties which are Coastal States or are members of the Inter-American Tropical Tuna Commission (IATTC) at the time that this Agreement enters into force. Each such Contracting Party may appoint one representative and up to three alternate representatives to the Council, but each such Party shall have only one vote. All Council decisions shall be adopted by unanimous agreement of such Contracting Parties present when the vote is taken, provided that at least five such Contracting Parties are represented.

(B) The Council shall have authority:

1. To issue licenses in accordance with Article IV;

2. To appoint the national Authority designated by any Contracting Party to issue licenses in accordance with this Agreement;

3. To appoint a Director, and to provide the resources to pay for his services and those of any needed staff, by contract or other arrangements;

4. To approve the proposed budget which shall be submitted annually to the Council by the Director;

5. To authorize the Director to request and utilize the services and resources of any competent international agency or organization;

6. To establish license fees within limits prescribed in the Protocol to this Agreement;

7. To disburse annually the revenue produced by the license fees in accordance with the Protocol to this Agreement;

8. To request reports from any competent international agency or organization on the status of any stocks of tuna in the Agreement Area, and to take such reports into account to promote the establishment of a comprehensive regional tuna conservation regime comprised of all States that fish tuna in the eastern Pacific Ocean on a meaningful scale in relation to conservation requirements;

9. To establish regulations for the effective implementation of this Agreement;

10. To adjust the boundaries of the Agreement Area, in accordance with recommendations by the Director.

(C) When the Council decides, based on scientific data contained in a report of any competent international agency or organization, that there is urgent necessity to conserve tuna resources, the Contracting Parties shall enter into consultations among themselves, and with States that are not Contracting Parties and fish tuna in the eastern Pacific Ocean on a meaningful scale in relation to conservation requirements.

(D) In addition to actions taken in accordance with paragraph (C), whenever the Contracting Parties include all States that fish tuna in the eastern Pacific Ocean on a meaningful scale in relation to conservation requirements, pending conclusion of a comprehensive regional tuna conservation regime in which all such States participate, the Council may make interim conservation recommendations concerning tuna resources. Such recommendations shall be based on the reports referred to in paragraph (B) (8), and shall be consistent with and not supercede, the obligations of any Contracting Party pursuant to any relevant multilateral conservation agreement.

(E) The Council shall meet ordinarily once a year, and extraordinarily at the request of the Director or representatives of two Contracting Parties.

(F) The Director shall carry out duties set forth in this Agreement and as otherwise prescribed by the Council. The Director shall be responsible to the Council.

(G) The Contracting Parties shall request their licensed vessels to cooperate with any competent international agency or organization to facilitate the collection of appropriate data.

(H) Any authority not expressly provided to the Council is reserved to the Contracting Parties.

ARTICLE IV

(A) The Contracting Parties agree to the issuance of licenses permitting access to fishing in the Agreement Area. Licensing authority shall be vested in the Council.

(B) The Contracting Parties agree that, in order to fish in the Agreement Area for any of the species of tuna designated in Article II, vessels flying their flags shall be required to have a valid license, issued in accordance with this Agreement.

(C) License fees shall be established according to the provisions of the Protocol to this Agreement.

(D) The Council, through the Director or an appointed national Authority, shall issue licenses directly to owners or their representatives, of the flag vessels of the Contracting Parties in accordance with the Protocol to this Agreement.

ARTICLE V

Any Contracting Party may require only those vessels flying its own flag to utilize the services of its national Authority appointed by the Council.

ARTICLE VI

(A) The Contracting Parties agree not to prohibit the importation of tuna and tuna products from another Contracting Party, as a result of any enforcement action by that Contracting Party consistent with this Agreement, as long as such Party is acting in conformity with this Agreement.

(B) Each Contracting Party shall adopt, as soon as possible, such provisions in its national law as may be necessary to ensure that its own flag vessels comply with the provisions of this Agreement and its Protocol.

ARTICLE VII

Contracting Parties to this Agreement may be: (A) Coastal States as defined in Article II, or (B) member States of the IATTC.

ARTICLE VIII

Any State not included in Article VII may become a Contracting Party by adhering to this Agreement after unanimous approval by the Council.

ARTICLE IX

This Agreement shall enter into force 30 days after the deposit of the fifth instrument of ratification or adherence by a Coastal State.

In the case of any State that deposits its instrument of ratification or adherence after the Agreement has entered into force, this Agreement shall enter into force for such State 30 days after the date on which such State has deposited said instrument.

ARTICLE X

The instruments of ratification or adherence shall be deposited with the Government of Costa Rica, at the Ministry of Foreign Relations and Worship.

ARTICLE XI

If during any period after entry into force, there are fewer than five Contracting Parties that are Coastal States, the provisions of this Agreement shall not apply for such remaining Contracting Parties during such period, but this Agreement shall not terminate.

ARTICLE XII

Any Contracting Party may, at any time after two years from the date on which this Agreement has entered into force for such Party, withdraw from this Agreement upon giving written notice to the Ministry of Foreign Relations and Worship of Costa Rica. If such notice is received by the Government of Costa Rica no later than October 1 of any year, it shall become effective on December 31 of that year. Any such notice received after October 1 of any year shall become effective on December 31 of the following year.

ARTICLE XIII

The provisions of this Agreement do not prejudice the positions of the Contracting Parties regarding internal waters, territorial seas, exclusive economic zones, fishery conservation zones, high seas, or sovereign rights or jurisdiction for any other purpose.

ARTICLE XIV

The Contracting Parties, recognizing the interim nature of this Agreement and the highly migratory character of the tuna resource, agree to continue their efforts to establish a new regional regime for the conservation, management, and orderly exploitation of tuna resources in the eastern Pacific Ocean.

This regional regime shall include equitable guaranteed quotas to Coastal States based upon, *inter alia*, the criterion of concentration of the tuna resource, the effective measurement of which shall be determined in the future agreement among participants in the tuna fishery in the area regulated by the IATTC.

ARTICLE XV

The Contracting Parties, in view of their mutual interest in the effective implementation of the measures provided by this Agreement, undertake to cooperate to the extent possible in their tuna fisheries relations in the eastern Pacific Ocean, pending the issuance of licenses pursuant to this Agreement.

ARTICLE XVI

This Agreement shall be open for signature from March 15, 1983, until such time as the depositary shall receive the instrument of ratification or adherence of a fifth Coastal State.

In witness whereof, the undersigned plenipotentiaries, duly authorized by their respective governments, have signed this Agreement.

Done at San Jose, Costa Rica, on March 15, 1983, in the Spanish and English languages, both texts being equally authentic, and will remain with the depositary, that will provide certified copies of both texts to all signatory States.

For the Government of the United States of America:

THEODORE G. KRONMILLER,
Deputy Assistant Secretary of State
for Oceans and Fisheries.

For the Government of the Republic of Costa Rica:

FERNANDO VOLIA JIMENEZ,
Minister of Foreign Affairs and Worship.

FRANCISCO MORALES H.,
Minister of Agriculture.

For the Government of the Republic of Panama:

ROBERTO JOVANÉ SANTAMARÍA,
Chargé d'Affaires a.i.

PROTOCOL TO THE EASTERN PACIFIC OCEAN TUNA FISHING AGREEMENT

(A) 1. If the Agreement enters into force with five Contracting Parties, the fee for a fishing license shall be US $60 (sixty dollars) per net registered ton of the vessel requesting the license.

2. For each additional Contracting Party which is a Coastal State, the Council shall adjust the license fee up to a maximum of US $100 (one hundred dollars) per net registered ton. For this purpose, the Council shall take into account, *inter alia*, the amount of tuna taken within 200 nautical miles from the baselines from which the breadth of the territorial sea of the Coastal State ratifying or adhering to this Agreement is measured.

The minimum increase in the fee for each additional Coastal State ratifying or adhering, after the sixth, shall be US $10 (ten dollars) per net registered ton. The minimum increase for the sixth Coastal State may be more than, or less than, US $10 (ten dollars) per net registered ton, also as determined by the Council.

3. Upon withdrawal by any Coastal State, the license fee shall be decreased, taking into account, *inter alia*, the amount of tuna taken within 200 nautical miles of the aforementioned baselines of the Coastal State withdrawing from the Agreement. However, in no case shall the fee be less than US $60 (sixty dollars) per net registered ton.

(B) Licenses may be purchased at any time upon full payment of the established fee. Licenses shall be valid until December 31 of each year and allow access to fishing in the Agreement Area.

(C) Any Contracting Party's vessel with a net registered tonnage of 200 tons or less may obtain licenses on a semi-annual rather than on an annual basis. The fee for a semi-annual license shall be one-half of the annual fee.

(D) Licenses shall not be required of vessels with a net registered tonnage of 200 tons or less which fish exclusively within 200 nautical miles of the aforementioned baselines of their flag State. However, the flag State shall notify the Director of the names, registrations, tonnages and catches of such vessels.

(E) For the purpose of the Agreement and this Protocol, the term "tons" refers to short tons.

(F) After deducting an appropriate percentage of the total fees collected for administrative costs, but in no case more than 10 percent of the annual total, the Council shall disburse annually the total balance of all fees to the Coastal States in proportion to the amount of tuna taken within 200 nautical miles of each Coastal State measured from the aforementioned baselines, during the year in which the licenses are issued. For the purposes of such disbursement, the Council in accordance with paragraph (G) of this Protocol may request, in addition, data from any competent international agency or organization.

(G) 1. All licensed vessels shall provide written reports on the size of the catches taken in the Agreement Area making specific mention of the coordinates of where the catches were made. These data shall be entered in the log book of each vessel.

2. These data shall be confidential and shall not be used for any purpose other than as specifically provided by the Agreement and this Protocol.

3. The Director shall transmit to the Council aggregate data by area and size of catch.

4. The Council shall determine the mechanisms of collection and analysis of these data.

5. In accordance with Article VI(B) of the Agreement, each Contracting Party shall establish and enforce appropriate penalties for failure of its vessels to comply with their obligations set forth in this Protocol.

(H) The Contracting Parties will consult, as appropriate, with other States with a view to agreeing on the conditions of participation in this Agreement.

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